IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 262 of 1985

with

CRIMINAL APPEAL No 331 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL and

MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

NARSINH MELABHAI

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 262 of 1985

MR MAGANBHAI BAROT for Petitioners

MR. PUJARI, ADDL. PUBLIC PROSECUTOR for Respondent No. 1

2. Criminal AppealNo 331 of 1985

MR. PUJARI, ADDL. PUBLIC PROSECUTOR for Respondent No. 1

MR MAGANBHAI BAROT for Petitioners

CORAM : MR.JUSTICE B.C.PATEL and
MR.JUSTICE A.K.TRIVEDI
Date of decision: 06/04/99

ORAL JUDGEMENT (Per B.C. Patel, J.)

Criminal Appeal No. 262 of 1985 is preferred by original accused who were convicted for an offence punishable under section 325 read with section 34 of the Indian Penal Code on 31.1.1985 by learned Extra Additional Sessions Judge, Nadiad in Sessions Case No. 109 of 1984. The accused were also tried for offences punishable under section 302, r.w 148, 149 and sec. 323 r.w. 149, 148, and 447 of Indian Penal Code and were acquitted for the offences and against that order of acquittal, the State has preferred Criminal Appeal No. 331 of 1985.

2. Shortly narrated, the facts as it emerges from the prosecution version, are as under:-

2.1 Informant Chanchalben, PW. 1, residing at village Rinza of Taluka Khambhat, Dist. Kheda got the title of land bearing survey No. 234 transferred to her name by a registered sale deed on 17.5.1984 from Jaguben, Ramaben and Paluben. On 22.5.1984, for cultivation of the land, in the company of relatives and the persons who transferred the land, informant reached the spot. When the process of cultivation was going on, the accused-appellants arrived at the spot with sticks in their hands. As per prosecution case, there was some altercation. Chanchalben who got the title of the land was cultivating the land with whom the accused quarrelled. In the meanwhile, Gafurbhai Dayabhai, owner of the adjoining field came and was pacifying the accused, stating that as Chanchalben has purchased the piece of land, she should be allowed to cultivate. At this point of time, all the accused got enraged and attacked the deceased with sticks, as a result of which, Gafurbhai fell down on the earth. Ramjibhai also intervened as a result of which he also sustained injuries. Accused persons went away from the scene of occurrence. Son of Gafurbhai arrived at the spot, and Gafurbhai was removed by his son to Tarapur, where he was declared dead. Information was lodged before the police, vide Exh. 27. Accused were charge sheeted in the court of learned Judicial Magistrate, First Class for offences punishable under sections 302, 323, 447, 147, 148 and 149 of the Penal Code; As the offence u/s 302 of the Penal Code was exclusively triable by the Court of Sessions, the accused were committed to the Court of Sessions.

Charge, Exh.3, was read over to the accused for the aforesaid offences to which the accused pleaded not guilty and contended that they were entirely innocent and have committed no offence. The trial Court, on appreciation of evidence, considering the submissions made by the learned advocates and the statement of accused recorded under section 313 of the Criminal Procedure Code, arrived at a conclusion that the accused are guilty of having committed an offence punishable under section 325 read with section 34 of the Penal Code and acquitted the accused for other charges. Learned Additional Sessions Judge, after hearing the accused on the question of sentence, awarded imprisonment of two years. As stated above, Criminal Appeal No. 262/85 is preferred by the original accused against the order of conviction and sentence, and Criminal Appeal No. 331 of 1985 is preferred against the order of acquittal.

3. In the instant case, Mr. Barot, learned senior Advocate appearing for the original accused submitted that even if the prosecution case as it is placed before the Court is believed, there is no reason to interfere with the order passed by the trial Court. He pointed out from the medical evidence that the deceased Gafurbhai sustained in all six injuries, which were noted by Medical Officer as under :-

(1). C.L.W. 5 cms X 2 cms X bone deep on middle of front of right leg.
(2). Multiple oblique reddish abrasions varying in size from about 10 cm x 2 cm to 3 cm X 1.5 cm on both gluteal regions.
(3). Swelling on left wrist clotted blood seen with II lower end of ulna and radius.
(4). Swelling of back and right hand and wrist with C.L.W. of about 1 cm X 1/2 cm X 1/2 cm on back and Rt. head of Rt. 2nd, 3rd, 4th Metacarpal bone and lower end of ulna and radius.
(5). Local crepitus felt on touch in respect of lower 1/3 of left side of chest II 5th & 6th ribs, II 9th and 10th ribs.

4. It may be noted that attention of the Medical Officer PW. 3 was drawn to a book "The Essentials of Forensic Medicine and Toxicology" by K.S. Narayan Reddy, Principal and Professor of Forensic Medicine, Osmania Medical College, Hyderabad to the following passage (1987 Edition, page 217):

"Spontaneous rupture of the spleen is very rare and may occur due to sudden torsion of the

pedicle of an abnormally mobile spleen producing extreme passive congestion."

4.1 Author has also pointed out that "the spleen is ruptured usually in its concave surface and is usually associated with injuries to other organs and rib fractures" and further that "a relatively mild trauma may predispose the spleen to rupture when it is deceased and enlarged eg. malaria, kala azar and leukaemia."

4.2 Doctor should have been questioned that there was twisting or torsion of the support all of a sudden and further that the sudden torsion of support was to an abnormal mobile spleen which was producing extreme passive congestion, or that the spleen was diseased. In the absence of such evidence, ordinarily or usually rupture of spleen is associated with injuries to other organs and rib fractures.

4.3 One may not be knowing where spleen is situated but he cannot escape from his liability. In the instant case there is a rupture of spleen associated with fracture of rib.

5. Learned counsel Mr. Barot submitted that Medical Officer Dr. Harisidh Majmudar PW. 3 in his evidence has stated that the deceased died on account of rupture of spleen, and that injury was sufficient in the ordinary course of nature to cause death. This witness has further stated that the injuries sustained by the deceased were possible by stick. In further chief examination, he has stated that rupture of spleen was possible on account of fractures caused to 9th and 10th ribs. In the cross examination, he has admitted that there was no corresponding external injuries with regard to the fractures of ribs 5th, 6th, 9th and 10th. He was not in a position to state positively the place where the blow must have landed which might be responsible for causing the fractures. He has specifically stated that as there were no external injuries corresponding to internal injuries causing fractures to 9th and 10th ribs, it is possible to say that the injuries could have been caused by a push with the stick. He wanted to suggest that on account of the fracture, if a push is given by means of a stick, the fractured bones of ribs may come in contact with the Spleen and such bone/s which came in contact with the spleen might be responsible for causing rupture of the spleen. To our great surprise, there was nothing in the post mortem notes as well as in the evidence to indicate the external marks of injury though there were fractures of four ribs. Inquest report

prepared under section 174 of the Criminal Procedure Code produced on record vide Exh. 22 indicates that there were external injuries. It appears that Doctor has not noticed the injuries and examination appears to be superficial. Ordinarily, it would occur to an expert that when there is a fracture, why there is no external injury.

6. Anyway, in the instant case, it won't make any difference even if the external injuries would have been noted by the Medical Officer. Mr. Barot, learned counsel submitted that Gafurbhai, the deceased was an outsider. The quarrel took place between the informant and the accused persons. Deceased Gafurbhai came to pacify and all of a sudden the incident in question took place. He ofcourse submitted that the defence case is that the deceased came with a gun and when he aimed towards the accused, accused Bhailal and Chatur delivered stick blows. We do not consider that aspect at this stage. It is also not disputed that the deceased sustained injuries and two other persons Panchabhai and Ramjibhai also sustained injuries, which were simple in nature. The trial Court, on appreciation of the evidence, arrived at a conclusion that when the accused reached the spot, there was no intention on their part to commit any crime. Under the bonafide belief that they had right to cultivate the land, they reached the field. They also produced a copy of the application given to Mamlatdar, vide Exh. 42. According to their case, prior to execution of the documents, they were claiming right over the land. Accused No. 3,4 and 6 are brothers and they must have gone with a view to protect their rights. Accused did not quarrel soon after reaching the field. It is only after the arrival of Gafurbhai there was altercation and thereafter the accused delivered blows by means of sticks, as a result of which Gafurbhai sustained fractures. There is no satisfactory evidence on record to show as to out of the seven accused, which accused was responsible for causing the injury which ultimately proved fatal, i.e. the fractures of the ribs.

7. We may not entertain the defence at this stage that Gafurbhai the deceased came with a gum and aimed the gun, and therefore, in self defence the accused assaulted Gafurbhai. According to Mr. Barot, learned counsel, the incident in question took place on 17.5.1984 and the accused are on bail since long, and thereafter, no untoward incident has happened. Not only that but they have compounded the offence. From the narration of the incident the common object of the assembly that may be inferred was causing grievous hurt to Gafurbhai and to

cause injuries to others who intervened. There was no common object to commit murder of deceased. Use of lathis in assaulting the deceased, the place where blows landed on the person of the deceased and others and nature of injuries clearly reveal that there was neither common object nor common intention. It is not possible to infer that any member had the knowledge that the death is likely to be caused in prosecution of the common object of assault. We have earlier pointed from the medical evidence that the deceased died on account of rupture of spleen and spleen got ruptured not because of a direct blow given by any of the accused, but as a result of a fractured bone which came in contact with the spleen. It might have happened that after sustaining the fractures, the deceased fell on the ground as a result of which the ribs must have come in contact with force with the spleen as a result of which there must be rupture of the spleen. As suggested, the injury could have been caused by a push with the stick. The Doctor was not certain about the corresponding injury. The accused were convicted for an offence punishable under section 325 of the Penal Code for causing injuries. When the prosecution has failed to prove that the accused or a particular accused, with an intention to cause particular injury delivered the blow, it cannot be said that the accused were responsible for causing the death. As pointed out by us earlier, there is no specific evidence as to which accused caused the injury, and therefore, it cannot be said that a particular accused was responsible for causing the fatal injury. It is also required to be noted that rupture of spleen was not intended, and is not a direct consequence of an injury caused to the deceased.

8. On the appreciation of medical evidence and oral evidence, the trial Court arrived at a conclusion that the prosecution has not established that the accused committed an offence punishable under section 302 of the Indian Penal Code r.w. 149 of the Penal Code. Considering the evidence on record, the learned Additional Public Prosecutor could not point out that the view taken by the trial Court is perverse or that the view taken by the trial Court is not possible.

9. Mr. Pujari, learned Additional Public Prosecutor could not satisfy us from the record that there is any material to connect the accused with an offence punishable under section 302 of the Penal Code. In view of what we have stated above, the appeal preferred by the State fails. Appeal No. 331/85 therefore stands dismissed.

10. So far as the appeal filed by the accused is concerned, Mr. Barot, learned counsel submitted before us that the parties are of the same village, and relations between them are not strained; Now there are cordial relations; It is in the interest of the village people and in the interest of peace in the village to allow the parties to compound the offence. He submitted that considering section 320 of the Criminal Procedure code, offence under section 325 of the Penal Code is compoundable with the permission of the Court. We accept the verification of the accuses and the complainant and the son of the deceased who were present before the court and they have admitted the aforesaid facts. Learned counsel Mr. Barot submitted that in view of this, the parties may be permitted to compound the offence so that peace in the village is not disturbed which is prevailing since the occurrence of the incident in 1984. Mr. Barot submitted that the accused-appellants shall pay in all a sum of Rs. Ten Thousand to the heirs of Gafurbhai through Udaysing Gafurbhai, son of the deceased Gafurbhai by way of compensation. The amount shall be deposited by the accused-appellants in the trial Court within a period of four weeks from today and after the amount is deposited, it will be open for the son of the deceased to withdraw this amount. On proper identification, the trial Court shall pay the amount after the same is deposited by the accused. In the result, Criminal Appeal No. 262 of 1985 is allowed accordingly.

Order accordingly.

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